No. DA 23-0572

IN THE SUPREME COURT OF THE STATE OF MONTANA

SCARLET VAN GARDEREN, et al.,

Plaintiffs-Appellees,

v.

STATE OF MONTANA, et al.,

Defendants-Appellants.

On appeal from the Montana Fourth Judicial District Court, Missoula County
Cause No. DV 2023–541, the Honorable Jason Marks, Presiding

BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS AND ADDITIONAL NATIONAL AND STATE MEDICAL AND MENTAL HEALTH ORGANIZATIONS IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Montana Rule of Civil Procedure 7.1, the undersigned counsel for the American Academy of Pediatrics ("AAP"), the Academic Pediatric Association, the American Academy of Child & Adolescent Psychiatry ("AACAP"), the American Academy of Family Physicians ("AAFP"), the American Academy of Nursing ("AAN"), the American Association of Physicians for Human Rights, Inc. d/b/a GLMA: Health Professionals Advancing LGBTQ+ Equality ("GLMA"), the American College of Obstetricians and Gynecologists ("ACOG"), the American College of Osteopathic Pediatricians ("ACOP"), the American College of Physicians ("ACP"), the American Medical Association ("AMA"), the American Pediatric Society ("APS"), the Association of American Medical Colleges ("AAMC"), the American Psychiatric Association ("APA"), Association of Medical School Pediatric Department Chairs, Inc. ("AMSPDC"), the Endocrine Society ("ES"), the Montana Chapter of the American Medical Association ("MTAMA"), the Montana Chapter of the American Academy of Pediatrics ("MTAAP"), the National Association of Pediatric Nurse Practitioners ("NAPNAP"), the Pediatric Endocrine Society ("PES"), the Societies for Pediatric Urology ("SPU"), the Society for Adolescent Health and Medicine ("SAHM"), the Society for Pediatric Research ("SPR"), the Society of Pediatric Nurses ("SPN"), and the World Professional Association for Transgender Health ("WPATH") certify that:

1. AAP, the Academic Pediatric Association, AACAP, AAFP, AAN, GLMA, ACOG, ACOP, ACP, AAMC, AMA, APS, APA, AMSPDC, ES, MTAMA, MTAAP, NAPNAP, PES,

CERTIFICATE OF SERVICE 24

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ensure that all adolescents, including those with gender dysphoria, receive the optimal medical and mental health care they need and deserve. *Amici* represent thousands of healthcare providers who have specific expertise with the issues raised in this brief. The Court should consider *amici*'s brief because it provides important expertise and addresses misstatements about the treatment for transgender adolescents.

SUMMARY OF THE ARGUMENT

On April 17, 2023, Montana Governor Greg Gianforte signed S.B. 99 (the "Healthcare Ban"), enacting a law that effectively bans healthcare providers from providing patients under 18 with critical, medically necessary, evidence-based treatments for gender dysphoria.[2] The Healthcare Ban makes the provision of such treatments professional misconduct, prohibits the use of public funds for such treatments, and subjects healthcare providers to at least a one year suspension, and private suit.[3] Denying such evidence-based medical care to adolescents who meet the requisite medical criteria puts them at risk of significant harm. Below, *amici* provide the Court with an accurate description of the relevant treatment guidelines and summarize the scientific evidence supporting the gender-affirming medical care for adolescents prohibited by the Healthcare Ban.[4]

Gender dysphoria nde4.3 ( )]0.004 Tc 0.037 Tw (.5 (nd)-8.2 ( )--0.004 Tc -28 -2.oOoo)

to clinically significant distress and impair functioning in many aspects of the patient's life.[5] If not treated, or treated improperly, gender dysphoria can result in debilitating anxiety, depression, and self-harm, and is associated with higher rates of suicide. As such, the effective treatment of gender dysphoria saves lives.

The widely accepted recommendation of the medical community, including that of the respected professional organizations participating here as *amici*, is that the well-accepted protocol for treating gender dysphoria is "gender-affirming care."[6] Gender-affirming care is care that supports an individual with gender dysphoria as they explore their gender identity—in contrast with efforts to change the individual's gender identity to match their sex assigned at birth, which are known to be ineffective and harmful.[7] For adolescents with persistent gender dysphoria that worsens with the onset of puberty, gender-affirming care may include medical care

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[5] *See, e.g.*, Jason Rafferty, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) PEDIATRICS e20182162, at 2–3 tbl.1 (2018) [hereinafter, "AAP Policy Statement"], https://perma.cc/DB5G-PG44. The American Academy of Pediatrics recently voted to reaffirm the AAP Policy Statement. *See* Alyson Sulaski Wyckoff, *AAP Reaffirms Gender-Affirming Care Policy, Authorizes Systematic Review of Evidence to Guide Update*, AAP NEWS (Aug. 4, 2023), https://perma.cc/XS4B-WBLH. AAP's review and reaffirmation were undertaken as part of its normal procedures to perform such reviews on a five-year basis.

[6] AAP Policy Statement, *supra* note 5, at 10.

[7] *See, e.g.*, Christy Mallory et al., *Conversion Therapy and LGBT Youth*, WILLIAMS

to align their physiology with their gender identity. Empirical evidence indicates that gender-affirming care, including gender-affirming medical care provided to carefully evaluated patients who meet diagnostic criteria, can alleviate clinically significant distress and lead to significant improvements in the mental health and overall well-being of adolescents with gender dysphoria.[8]

The Healthcare Ban disregards this medical evidence by precluding healthcare providers from providing adolescent patients with treatments for gender dysphoria in accordance with the well-accepted protocol. Accordingly, *amici* urge this Court to affirm the district court's preliminary injunction.

ARGUMENT

This brief first provides background on gender identity and gender dysphoria. It then describes the professionally accepted medical guidelines for treating gender dysphoria as they apply to adolescents, the scientifically rigorous process by which these guidelines were developed, and the evidence that supports the effectiveness of this care for adolescents with gender dysphoria. Finally, the brief explains how the Healthcare Ban would irreparably harm adolescents with gender dysp.5 (r)3Bf97 (yf)-4.3

significant distress that can lead to "impairment in peer and/or family relationships, school performance, or other aspects of their life."[15] Gender dysphoria is a formal diagnosis under the American Psychiatric Association's Diagnostic and Statistical Manual (DSM-5-TR).[16]

Adolescents with gender dysphoria are not expected to identify later as their sex assigned at birth.[17] Instead, "[l]ongitudinal studies have indicated that the emergence or worsening of gender dysphoria with pubertal onset is associated with a very high likelihood of being a transgender adult."[18]

If untreated or inadequately 8.3 (nt)8.5 (r)3.7 (e)3.5 (a)12.1 (te)- -0 0 14.04 374.4 470.

[19] Indeed, over 60% of transgender adol (s (a)3.c)3.6 (e)12.

and young adults reported having engaged in self-harm during the preceding 12 months, and over 75% reported symptoms of generalized anxiety disorder in the preceding two weeks.[20] Even more troubling, more than 50% of this population reported having seriously considered attempting suicide,[21]

gender dysphoria is untreated.[24]

A. The Gender Dysphoria Treatment Guidelines Include Thorough Mental Health Assessments and, for Some Adolescents, Gender-Affirming Medical Care.

The treatment protocols for gender dysphoria are laid out in established, evidence-based clinical guidelines: (i) the Endocrine Society Clinical Practice Guideline for Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, and (ii) the WPATH Standards of Care for the Health of Transgender and Gender-Diverse People (together, the "Guidelines").[25] The Guidelines have been developed by expert clinicians and researchers who have worked with patients with gender dysphoria

1. The Guidelines Do Not Recommend Gender-Affirming Medical Care for Prepubertal Children.

For prepubertal children with gender dysphoria, the Guidelines provide for mental health care and support for the child and their family, such as through psychotherapy and social transitioning.[26] The Guidelines do *not* recommend that prepubertal children with gender dysphoria receive gender-affirming medical care or surgeries.[27]

2. A Robust Diagnostic Assessment Is Required Before Gender-

development, gender diversity in children and adolescents, can assess capacity to consent, and possesses knowledge about gender diversity across the life span; (4) has expertise and received training in autism spectrum disorders and other neurodevelopmental presentations, or collaborates with a developmental disability expert when working with neurodivergent patients; and (5) continues engagement in professional development in areas relevant to gender diverse children, adolescents, and families.[28]

Prior to developing a treatment plan, the HCP should conduct a "comprehensive biopsychosocial assessment" of the adolescent patient.[29] The HCP conducts this assessment to "understand the adolescent's strengths, vulnerabilities, diagnostic profile, and unique needs," so that the resulting treatment plan is appropriately individualized.[30] This assessment must be conducted collaboratively with the patient and their caregiver(s).[31]

3. In Certain Circumstances, the Guidelines Provide for the Use of Gender-Affirming Medical Care to Treat Adolescents with Gender Dysphoria.

For youths with gender dysphoria that continues into adolescence—after the

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[28] *See* WPATH Guidelines, *supra* note 25, at S49.

[29] *Id.* at S50.

[30] *Id.*

[31] *Id.*

confirm that there are no medical contraindications.[34]

If all of the above criteria are met, and the patient and their parents provide informed consent, gonadotropin-releasing hormone (GnRH) analogues, or "puberty blockers," may be offered beginning at the onset of puberty.[35] The purpose of puberty blockers is to delay pubertal development until adolescents are old enough and have had sufficient time to make more informed decisions about whether to pursue further treatments.[36] Puberty blockers also can make pursuing transition later in life easier, because they prevent irreversible bodily changes such as protrusion of the Adam's apple or breast growth.[37] Puberty blockers have well-known efficacy and side-effect profiles.[38] Their effects are generally reversible, and when a page=3 (1)

puberty blockers are exceedingly rare when provided under clinical supervision.[41]

Later in adolescence—and if the criteria below are met—hormone therapy may be used to initiate puberty consistent with the patient's gender identity.

become irreversible after those secondary sex characteristics are fully developed, others are partially reversible if the patient discontinues use of the hormones.[46]

The Guidelines contemplate that the prescription of puberty blockers and/or hormone therapy be coupled with education on the safe use of such medications and close monitoring to mitigate any potential risks.[47] Decisions regarding the appropriate treatment for each patient with gender dysphoria are made in consultation with the patient, their parents or guardians, and the medical and mental health care team. There is “no one-size-fits-alJ0.42Tf (sa) (i)-9.1 (z)-5.4 (e).w 2.a (r)3.7 Tc -0.

imposes strict evidentiary requirements based on the internationally recognized Grading of Recommendations Assessment, Development and Evaluation (GRADE) system.[50] That GRADE assessment is then reviewed, re-reviewed, and reviewed again by multiple, independent groups of professionals.[51] Reviewers are subject to strict conflict of interest rules.

and debate, receiving a total of 2,688 comments.[54] 119 authors were ultimately involved in the final draft, including feedback from experts in the field as well as from transgender individuals and their families.[55]

C. Scientific Evidence Indicates the Effectiveness of Treating Gender Dysphoria According to the Guidelines.

Multiple studies indicate that adolescents with gender dysphoria who receive gender-affirming medical care experience improvements in their overall well-being.[56] A number of studies have been published that investigated the use of puberty blockers on adolescents with gender dysphoria,[57] and/or the use of hormone

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[54] *See id.*

[55] *See id.*

[56] *See* Martin, *supra* note 8, at 2.

[57] *See, e.g.*, Christal Achille et al., *Longitudinal Impact of Gender-Affirming Endocrine Intervention on the Mental Health and Wellbeing of Transgender Youths: Preliminary Results*, 8 INT'L J PEDIATRIC ENDOCRINOLOGY 1–5 (2020), https://perma.cc/K5SR-EE3G; Polly Carmichael et al., *Short-Term Outcomes of Pubertal Suppression in a Selected Cohort of 12 to 15 Year Old Young People with Persistent Gender Dysphoria in the UK*, 16 PLOS ONE e0243894 (2021), https://doi.org/10.1371/journal.pone.0243894; Rosalia Costa et al., *Psychological Support, Puberty Suppression, and Psychosocial Functioning in Adolescents with Gender Dysphoria*, 12 J. SEXUAL MED. 2206–2214 (2015), https://pubmed.ncbi.nlm.nih.gov/26556015; Annelou L.C. de Vries et al., *Puberty Suppression In Adolescents With Gender Identity Disorder: A Prospective Follow-Up Study*, 8 J. SEXUAL MED. 2276–2283 (2011), https://pubmed.ncbi.nlm.nih.gov/20646177; Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 PEDIATRICS 696–704 (2014), https://pubmed.ncbi.nlm.nih.gov/25201798; Laura E. Kuper, et al., *Body Dissatisfaction and Mental Health Outcomes of Youth on* (continued…)

preliminary injunction.

Dated: April 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that foregoing Brief was served by electronic service upon counsel of record on April 11, 2024.

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CERTIFICATE OF COMPLIANCE

This Certificate of Compliance is made pursuant to Montana Rule of Appellate Procedure 11. I hereby certify that the foregoing Brief is proportionally spaced in size 14 Times New Roman font. Further, the foregoing Brief contains 4,770 words not including the table of contents, table of citations, Certificate of Service, or this Certificate of Compliance.

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